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In the Supreme Court of the United States

OCTOBER TERM, 1941

No. 874

CHESTER CHIANESE, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The Circuit Court of Appeals affirmed the judgment of conviction *per curiam,* without opinion (R. 25).

JURISDICTION

The judgment of the Circuit Court of Appeals was entered December 19, 1941 (R. 26). The petition for a writ of certiorari was filed January 16, 1942. The jurisdiction of this Court is conferred by Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925. See also Rule XI of the Criminal Appeals Rules promulgated by this Court May 7, 1934.

QUESTION PRESENTED

Whether there was sufficient evidence to warrant submission of the question of petitioner's guilt to the jury.

STATEMENT

Petitioner was convicted (R. 23–24) in the District Court of the United States for the District of New Jersey on the first count of a five-count indictment (R. 14–23).[1] This count (R. 15–18) charged that contrary to 18 U. S. C. 88 petitioner and others conspired to violate the internal revenue laws relating to carrying on the business of distillers (26 U. S. C. 2806 (f));[2] registering stills (26 U. S. C. 2810 (a)); making mash (26 U. S. C. 2834); and removing and concealing distilled spirits upon which the tax had not been paid (26 U. S. C. 2913). Petitioner was sentenced to imprisonment for eighteen months and to pay a fine of $500 (R. 24).

The Government's case may be summarized as follows:

In the spring of 1940, defendants Frank Pollastrelli, Pasquale Maruca and Domenica Perferi approached Wardell Hopkins and inquired whether

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[1] Petitioner was indicted along with Benny Ferrari, Albert Goldman, Pasquale Maruca, Domenico Perferi, Frank Pollastrelli, Umberto Sabatini, Oscar Salvatore, Bartholomew A. Tirro, George Vannozzi, and Joseph Vigilante.

[2] The Code references to the internal revenue statutes are to the Internal Revenue Code (United States Code, Supp. V, 1934 ed.).

he "knew of a place where they could set up a still" (R. 2, 4). Hopkins "answered in the affirmative" and about April 17, 1940, took them to the farm of George Ingling "and informed Ingling of their desire to set up a still" (R. 2, 4). These defendants entered into an agreement with Ingling whereby the projected still would be set up in a swamp at the back of his farm (R. 2–3, 4).

A day or two later these defendants, together with other defendants, returned to Ingling's farm, and during the ensuing few weeks commenced work on a road to make the still more accessible (R. 4). In addition, wooden vats, tubs, boilers, and a pump were brought to the location (R. 4, 6). The still never went into operation, however, because Ingling ordered the men to leave when he discovered that federal agents had his farm under surveillance (R. 4–5).

Prior to the removal of the equipment from Ingling's premises, he refused to permit the removal of a truck unless he was paid $200 "which he considered was reasonable for him to get at that time" (R. 3, 5, 9). Petitioner and defendant Pollastrelli then approached Hopkins, about five o'clock one morning, with respect to settling the difficulty with Ingling. Petitioner explained "that he and some friends of his were in trouble" and asked Hopkins "if he would go down to see what the trouble was" at the Ingling farm and then report the results of his investigation to him at a subsequent meeting at Browns Mills (R. 3). Pur-

suant to the arrangement, Hopkins found out "what the trouble was" with Ingling and advised petitioner (R. 3, 5). At this same meeting, petitioner paid Hopkins $10 for driving defendants Pollastrelli, Vannozzi and Salvatore to the Ingling farm (R. 3).

Subsequently, a still was set up at the farm of John Kobrich, and at least part of the equipment formerly at the Ingling farm was utilized (R. 2, 7, 10). One witness testified to seeing petitioner in an automobile following a truck which was carrying away the equipment from the Ingling farm, and when he "got near to the truck it seemed to him [the witness] that the car slowed up" but he "could not tell if there was a conversation between the persons in this automobile and the truck" (R. 7–8).

On July 2, 1940, Government agents seized the still at the Kobrich farm and arrested defendants Vannozzi and Ferrari, who were operating it at the time (R. 2, 8, 9).

Petitioner did not produce any testimony in his defense. The trial court granted petitioner's motion to dismiss the indictment as to all counts except the first, but denied his motion for a directed verdict on the first count (R. 10–11).

ARGUMENT

Petitioner does not deny that the evidence proved the existence of a conspiracy but contends only that there is no "substantial evidence that your peti-

tioner was associated in the unlawful enterprise" (Pet. 4).

We submit, however, that there is substantial undisputed evidence of petitioner's participation in the conspiracy. Clearly his association with other defendants in the effort to obtain Ingling's release of the truck (R. 3, 5), his admission to Hopkins that "he and some of his friends were in trouble" and his following of the truck bearing the still equipment (R. 3, 7–8), were facts from which the jury, under the circumstances, might reasonably infer that petitioner participated in the conspiracy. Direct evidence of participation in a conspiracy is unnecessary. Connection may be inferred from such facts and circumstances as legitimately tend to sustain that inference. *Glasser* v. *United States* (Nos. 30, 31, and 32, October Term, 1941, p. 14, decided January 19, 1942); *Manton* v. *United States,* 107 F. (2d) 834, 839 (C. C. A. 2), certiorari denied, 309 U. S. 664. As the court stated in *Goode* v. *United States,* 58 F. (2d) 105, 107 (C. C. A. 8), "the agreement is generally a matter of inference, deduced from the acts of the persons accused, which are done in pursuance of an apparent criminal purpose."

Petitioner points out that there is no evidence that he was ever on Ingling's farm (Pet. 2–3). Such evidence is unnecessary. If there is a concert of design, it is not necessary for each conspirator to participate in every detail of its execution. *Marx* v. *United States,* 86 F. (2d) 245,

250 (C. C. A. 8). Nor is it even necessary that all the conspirators be acquainted with one another. It suffices, if with knowledge that others have combined to violate the law, one knowingly cooperates in some affirmative manner, as petitioner did, to further the purpose of the conspiracy. *Martin* v. *United States,* 100 F. (2d) 490, 495–496 (C. C. A. 10).

The law is settled that whenever a conspiracy is established, as in the instant case, only slight evidence connecting a defendant with it may still be substantial and, therefore, sufficient to warrant submission to the jury of the issue of the defendant's guilt. *Galatas* v. *United States,* 80 F. (2d) 15, 24 (C. C. A. 8), certiorari denied, 297 U. S. 711; *Meyers* v. *United States,* 94 F. (2d) 433, 434 (C. C. A. 6), certiorari denied, 304 U. S. 583; *Marx* v. *United States, supra.* The jury was fully justified in inferring from the evidence that petitioner was one of the conspirators (cf. *Pernatto* v. *United States,* 104 F. (2d) 427 (C. C. A. 3)). No sufficient reason appears why the concurrence of the District Judge, the jury and the Circuit Court of Appeals as to the sufficiency of the evidence should not be accepted as final. *Delaney* v. *United States,* 263 U. S. 586, 589–590.

CONCLUSION

The decision below is correct, and there is involved no conflict of decisions or any question of general importance. We therefore respectfully

submit that the petition for a writ of certiorari should be denied.

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FEBRUARY 1942.

U. S. GOVERNMENT PRINTING OFFICE: 1942